IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 31333 of 2004(E)

PETITIONER:

SHYNY P.,
PUTHIYOTTIL HOUSE, KALPATHUR,
VIA. MEPPAYUR, KOZHIKODE.

(HINDI TEACHER, A.U.P. SCHOOL, PERAMBRA)

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,THIRUVANANTHAPURAM.

2. THE DISTRICT EDUCATIONAL OFFICER,
VADAKARA.

3. THE ASSISTANT EDUCATIONAL OFFICER,
PERAMBRA.

4. THE MANAGER,
A.U.P. SCHOOL, PERAMBRA, KOZHIKODE.

5. P.M. RADHAKRISHNAN,
HINDI TEACHER, A.U.P. SCHOOL, PERAMBRA, KOZHIKODE.

BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)

GOVT. PLEADER SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EXT.P1: TRUE COPY OF LETTER ISUSED BY T HE MANAGER DT. 5/6/2000.

EXT.P2: TRUE COPY OF PROCEEDINGS DT. 28/5/2001.

EXT.P3: TRUE COPY OF ORDER DT. 3/10/2001.

EXT.P4: TRUE COPY OF REVISION PETITIN DT. 27/11/2001.

EXT.P5: TRUE COPY OF GOVT. ORDER DT. 4/8/2004.

RESPONDENTS' EXHIBITS:

EXT.R4(A): TRUE COPY OF LETTER DT. 26/5/2000.

EXT.R4(B): TRUE COPY OF LETTER DT. 30/8/2000.

EXT.R4(C): TRUE COPY FO MEMORANDUM DT. 29/7/2001.

EXT.R4(D): TRUE COPY FO JUDGMENT IN OP.24394/01.

EXT.R4(E): TRUE COPY FO LETTER OF PETR. DT. 17/9/2001.

A.K. Basheer, J.

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W.P(C) No.31333 of 2004

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Dated this the 17th day of July, 2007.

J U D G M E N T

Petitioner claims that she being a dependant of late Othenan, who died in harness while serving in the school under the management of respondent No.4, is entitled to get the benefit of Rule 51B of Chapter XIV-A KER. Her request having been ultimately turned down by the Government also in Ext.P5, she has preferred this writ petition under Article 226 of the Constitution of India.

2. It is not in dispute that petitioner's father Sri.Othenan passed away on October 11, 1982 while he was working as a teacher in the school. It is also beyond controversy that petitioner who was born in the year 1975 was hardly 7 years of age at the time of the death of her father. She became a major on June 10, 1993. According to the petitioner no vacancy had arisen in the school from the date of her attaining majority till the year 2000. She submitted a letter/request before the Manager for the first time on May 26, 2000 as could be seen from Ext.R4(a), requesting to give her appointment as Language Teacher (Hindi). The said letter was obviously not an application contemplated under law or in conformity with the stipulations or procedure prescribed in the relevant order issued by the Government in this regard (G.O(P) 12/99/P & ARD dated 24/5/1999).

3. The petitioner had thereafter submitted an application as directed by the Departmental Officer in August 2000 , a copy of

which is on record as Ext.R4(b). But the Manager has raised a contention that even the said application was not in the prescribed format. Further it was defective for yet another reason that the documents like income certificate, legal heirship certificate, consent letter etc. were not appended to the application. It is also the case of the Manager that the educational qualification of the petitioner was not indicated in the said application. Anyhow, it is the admitted position that only the application referred to above was submitted before the management to consider the claim under Rule 51B.

4. It is contended by learned counsel for the petitioner that the claim made by the petitioner being a statutory right as is evident from the provisions contained in Rule 51B, it was incumbent on the Manager to inform the dependant of an employee dying in harness, as and when a vacancy arose. In other words, the contention appears to be that the Manager should keep track of the dependants of the employee dying in harness in the institution, and inform them as and when any vacancy arises in the school. Learned counsel draws support for this contention from the decision of this Court in Baiju Kumar v. D.E.O., Trivandrum (2003(3) KLT 240).

5. I have carefully perused the judgment particularly paragraph 7 therein. Undoubtedly the provisions contained in Rule 51B mandate that the Manager cannot shut his eyes and pretend as though he is not bound to give employment to the dependant of an employee dying in harness. As rightly noticed by the learned Judge, the Manager may be the best person to know about the vacancy position in his school.

6. But in my view , any claim made under Rule 51B has to be

considered on its merit in the prevailing facts and circumstances of that case. For instance, in this case, as noticed already, petitioner became major in the year 1993. She did not even choose to inform the Manager about her existing right under Rule 51B either when he became major or within 3 years thereof. According to the petitioner she did not choose to do so since no vacancy did arise in the school after she became a major. It may again be true that the vacancy arose in the school in the year 2000. But still , the petitioner did not submit a proper application. She did not produce the income certificate of the family nor did she bother to make available a consent letter from other dependants or such other documents along with the application which she had to necessarily produce.

7. In this context learned counsel for the petitioner invites my attention to the relevant order of the Government which prevailed in the year 1995. It is contended by him that no time limit was prescribed for submitting an application for employment by a dependant in 1993 when she became a major. But the amended rules were brought into force in 1999. Admittedly no application by the petitioner was pending at the time when the new rules came into force. Anyhow I do not propose to go into the above contention raised by the petitioner since it is settled position that the dependant of a deceased employee should submit an application in terms of the provisions contained in the Rules which govern the field at that relevant point of time. The petitioner had submitted such an application in terms of the Government Order of the year 1999. But still the fact remains that even the said application was defective. Anyhow, the short question that arises for consideration, in

my view, is whether the financial condition of the family of the petitioner was so precarious that she needed an employment to tide over a crisis at that point of time. Admittedly petitioner's father passed away in the year 1982. There is nothing on record to show that the family of the deceased employee was in such dire financial straits at that stage. Even assuming so, neither his widow nor other children did apply for a job. Though the petitioner had stated that none of her brothers or sisters were employed, there is nothing on record to substantiate the above contention. No material is also available as to why her mother or two brothers did not choose to apply at that time.

8. It is trite that the very purpose of the scheme envisaged for providing employment assistance to the dependants of employees who die in harness, is to tide over the sudden crisis that may arise in the family of the deceased employee due to his sudden demise. It has been repeatedly held by the Supreme Court in a catena of decisions that the dying in harness Scheme should not be treated as another avenue or channel of appointment. Undoubtedly it is an exception to the general rule and such exception should be exercised only in appropriate and very eligible cases.

9. Having regard to the entire facts and circumstances of this case I am not satisfied that this is a fit case in which the petitioner is entitled to get the benefit of Rule 51B. Of course learned counsel for the petitioner has invited my attention to a judgment rendered by a Division Bench of this Court in WA.No.1164/2005. It is true that the Division Bench had considered the statutory nature of the obligation cast on the Manager under Rule 51B in contra distinction to the

preferential claim under Rule 51A of Chapter XIV-A KER. But it can be noticed from the above judgment that the vacancy in that case had arisen on April 1, 2002. Application was submitted by the claimant in August 2002, hardly 4 months after the vacancy arose. It can be further noticed that the Manager had undertaken before the D.E.O that he was prepared to give employment to the claimant; but he resiled from that undertaking later. Further, the Manager did not choose to inform the claimant therein that her application was not proper.

10. But as rightly pointed out by the Manager in this case, he had informed the petitioner that her application was not proper and that relevant documents were not produced. It was also pointed out by the manager that the petitioner had not even complied with the direction issued by the DEO to submit a valid application with relevant documents. All the above aspects , in my view, will justify the stand taken by the manager that petitioner was not entitled to get the benefit of Rule 51B. The Govt. in Ext.P5 order had referred to the relevant aspects of the issue and come to the right conclusion that the petitioner was not entitled to get appointment. I do not find any material illegality or irregularity in the view taken by the Government.

Writ Petition is dismissed.

A.K. Basheer
Judge.

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